



University of Strathclyde
LAW CLINIC



10C TIME LIMITS IN DISABILITY DISCRIMINATION CASES

A guide for the general public

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Outline

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- ▶ Is my claim in time?
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- ▶ What if my claim is time barred (outwith the time limit)?
- ▶ Just and equitable argument

For more information on time bar, please see slideshows 2A-2D.

What is the time limit in a discrimination claim?

There are legal time limits within which a Claimant must raise a claim at the Employment Tribunal.

This is sometimes referred to as the 'time bar' in a case.

Time limits are designed to ensure that Claimants bring their complaints to the Tribunal promptly, while the evidence is still fresh and available, and to enable employers to know sooner than later when there is a claim against them.

Is my claim in time?

A claim for disability discrimination will be in time if the ET1 is submitted to the Tribunal within three months minus a day from the relevant act of discrimination (where there was only one incident).

Where there was more than one incident of discrimination, it must be brought within three months minus a day from the last act in a course of conduct of discrimination.

But first you must notify ACAS through the early conciliation notification scheme within that same time limit.

Notifying ACAS

Before you submit a claim to the Employment Tribunal, you must notify ACAS of your dispute. You do so by submitting a notification to ACAS through their Early Conciliation Scheme. Provided this is done within three months less day of the act of discrimination or last act in a course of conduct then this action will temporarily 'stop' the time bar clock.

The Early Conciliation Process (see slideshows 1A-1D) will last a maximum of 6 weeks. It usually lasts for 4 weeks if both the employee and employer are willing to enter into discussions to see if the case can be resolved. However if you do not want ACAS to contact your employer/former employer, or if an employer is not interested in discussions, then the certificate may be issued much earlier.

Effect of Early Conciliation on the time limit

The clock will begin ticking again when Early Conciliation finishes. You will be issued with an Early Conciliation Certificate at the end of the process. **Keep this safe.**

This has a reference number which you will need to submit on your ET1 application form. It will have the date the certificate was issued.

The impact of the EC process on your time limit varies depending on when within the 'normal time' limit you start this process and how long the EC process lasts. As a rule of thumb you have exactly one month from the date on the certificate within which to submit the ET1 form and ensure that it is in time. However if this date is before your normal time limit you will still be able to work to the normal time limit that applied at the outset to submitting a claim to the ET.

Do not leave this till the last date. Prepare to get the ET1 in with some time to spare.

What if my claim is time barred? (1)

If your claim is time barred, (i.e. submitted more than three months after the act or last act of discrimination, taking account of the early conciliation period) then it may still be allowed. However your claim will be rejected if you did not go through the early conciliation period and will definitely not be allowed to proceed.

If you think your claim may be late you still need to submit an Early Conciliation notification form but contact ACAS and ask for a certificate to be issued immediately (without going through any conciliation) and then proceed to submit the ET1 as soon as you receive the certificate.

What if my claim is time barred? (2)

If you have not yet submitted your ET1 and are worried that the claim is time barred (but have your Early Conciliation certificate), it is best to submit the ET1 anyway. Do so as soon as possible. If you are clear it is out of time you can acknowledge this and ask for the Tribunal to allow it to proceed anyway. If you are not sure or do not know what to say you can submit the claim and wait for the Respondent to make the time bar argument.

If you think there is a course of conduct say this to ensure events more than three months before are included.

The Tribunal has a discretion to allow to a discrimination complaint to proceed although late if it decides that it is just and equitable to do so and will often do so once it hears all the reasons as to why the claim is late. The main thing is to get the Early Conciliation certificate and submit the claim as soon as possible.

Just and equitable argument

Under Section 123 of the Equality Act, it is open to Claimants to argue that it is **'just and equitable'** for the time limit to be extended in discrimination cases.

The Tribunal will consider any factors presented to them and consider whether an extension of time would be fair in the circumstances.

When presenting this argument, you would want to provide evidence of the length and reasons for the delay (including medical evidence if for example your delay was due to a deterioration in health), the extent to which the evidence is likely to be affected by the delay, and the promptness with which you acted once you were fit to submit your claim. The more evidence provided to explain the delay the better.

There will sometimes be a separate Preliminary Hearing (see slideshows 4A-4E) to decide this issue. If there are other claims running anyway, such as an unfair dismissal claim, then the issue may be held over until after all the evidence has been heard.